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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/379,492	08/23/99	BURT P	REF/BURT/392

QM02/1123

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EXAMINER	
DERAKSHANI,P	
ART UNIT	**PAPER NUMBER**
3754	3

DATE MAILED: 11/23/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/379,492	Applicant(s) Burt
	Examiner PHILIPPE DERAKSHANI	Group Art Unit 3754

☐ Responsive to communication(s) filed on _____.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *20-35* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *20-35* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) *08/481,392*.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Drawings

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

3. The disclosure is objected to because of the following informalities:

On page 2 there is no brief description of Figure 1.

Appropriate correction is required.

Double Patenting

4. Claims 20-35 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 20-30 and 32-38 of copending Application No. 09/149,858 . This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 20-35 are provisionally rejected under the judicially created doctrine of double patenting over claims 20-30 and 32-38 of copending Application No. 09/149,858 . This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 20-21, 23, 25, 27-29, 31, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beard et al. in view of Welter.

Beard et al. shows an aerosol dispenser comprising a body 12, a closure 11, cylindrical flanges 2-3 and means for dispensing 29. Beard et al. lack the closure ultrasonically welded to the body. Welter shows two pieces welded ultrasonically to each other to assure a uniform distribution of amplitude of vibration and a resultant uniform bond (see column 1, lines 43-48). It would have been obvious to one of ordinary skill in the art to have modified the Beard et al. closure ultrasonically welded to the body as taught by Welter to assure a uniform distribution of amplitude of vibration and a resultant uniform bond.

9. Claims 22, 24, 30, 32 and 36 are rejected under 35 U.S.C. § 103 as being unpatentable over Beard et al. in view of Welter as applied to claims 20 and 35 above, and further in view of Mascia et al.

Beard et al. lack the flanges flat. Mascia et al. show a closure 16 and body 12 having flat flanges which are rolled and crimped together. It would have been obvious to one of ordinary skill in the art to have substituted the Beard et al. cylindrical flanges with flat flanges which are rolled and crimped together as taught by Mascia et al. as an alternative equivalent means for attaching a close to the body of an aerosol dispenser.

10. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beard et al. In view of Beard et al as applied to claim 20 above, and further in view of Ryden.

Beard et al lacks the aerosol dispenser an inhaler. Ryden shows an aerosol dispenser an inhaler containing medicaments to deliver prompt response to patients (see column 1, lines 9-18). It would have been obvious to one of ordinary skill in the art to have modified the Beard et al aerosol dispenser with an inhaler containing a medicament as taught by Ryden to deliver prompt response to patients.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nier et al. and Mims were cited to show further examples of ultrasonic welds.

12. This is a continuation of applicant's earlier Application No. 09/149,858. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philippe Derakshani whose telephone number is (703)308-0858.

11-20-99

PHILIPPE DERAKSHANI

PRIMARY EXAMINER

ART UNIT 3752

PD

November 20, 1999